



General Assembly

February Session, 2006

Raised Bill No. 415

LCO No. 2164

02164_____ENV

Referred to Committee on Environment

Introduced by:
(ENV)

***AN ACT CONCERNING ENVIRONMENTAL REMEDIATION
ALLOCATION.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-452 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2006*):

3 (a) Any person [, firm, corporation] or municipality which contains
4 or removes or otherwise mitigates the effects of oil or petroleum or
5 chemical liquids or solid, liquid or gaseous products or hazardous
6 wastes or hazardous substances resulting from any discharge, spillage,
7 uncontrolled loss, seepage or filtration of such substance or material or
8 waste shall be entitled to reimbursement or recovery from any person
9 [, firm or corporation] for the reasonable costs or to be expended for
10 such containment, removal, or mitigation, including the reasonable
11 costs of investigation and monitoring, if such oil or petroleum or
12 chemical liquids or solid, liquid or gaseous products or hazardous
13 wastes or hazardous substances pollution or contamination or other
14 emergency [resulted from the negligence or other actions of such
15 person, firm or corporation] (1) was directly or indirectly caused by
16 such person, or (2) such person, regardless of fault, is one of the

17 following: (A) The owner or operator of a facility, (B) any person who,
 18 at the time of disposal of any hazardous substance, owned or operated
 19 any facility at which such hazardous substances were disposed of, (C)
 20 any person who, by contract, agreement or otherwise, arranged for
 21 disposal or treatment, or arranged with a transporter for transport for
 22 disposal or treatment, of hazardous substances owned or possessed by
 23 such person, by any other party or entity at any facility owned or
 24 operated by another party or entity and containing such hazardous
 25 substances, and (D) any person who accepts or accepted any
 26 hazardous substances for transport to disposal or treatment facilities or
 27 sites selected by such person, from which there is any discharge,
 28 spillage, uncontrolled loss, seepage or filtration of hazardous
 29 substances, for the reasonable costs expended or to be expended for
 30 such containment, removal or mitigation, including the reasonable
 31 costs of investigation and monitoring. When such pollution or
 32 contamination or emergency results from the joint [negligence or
 33 other] actions or omissions of two or more persons, [firms or
 34 corporations,] each shall be liable to the others for a pro rata share of
 35 the costs of containing, and removing or otherwise mitigating the
 36 effects of the same and for all damage caused thereby. For purposes of
 37 this section, "hazardous substances" has the same meaning as provided
 38 in section 22a-134 and "owner and operator" and "facility" have the
 39 same meaning as provided in 42 USC 9601.

40 (b) No person [firm or corporation which] who renders assistance
 41 or advice in mitigating or attempting to mitigate the effects of an actual
 42 or threatened discharge of oil or petroleum or chemical liquids or
 43 solid, liquid or gaseous products or hazardous [materials] wastes or
 44 hazardous substances, other than a discharge of oil as defined in
 45 section 22a-457b, to the surface waters of the state, or [which] who
 46 assists in preventing, cleaning-up or disposing of any such discharge
 47 shall be held liable, notwithstanding any other provision of law, for
 48 civil damages as a result of any act or omission by him in rendering
 49 such assistance or advice, except acts or omissions amounting to gross
 50 negligence or wilful or wanton misconduct, unless he is compensated

51 for such assistance or advice for more than actual expenses. For the
52 purpose of this subsection, "discharge" means spillage, uncontrolled
53 loss, seepage or filtration, [and "hazardous materials" means any
54 material or substance designated as such by any state or federal law or
55 regulation.]

56 (c) The immunity provided in this section shall not apply to (1) any
57 person, firm or corporation responsible for such discharge, or under a
58 duty to mitigate the effects of such discharge, (2) any agency or
59 instrumentality of such person, firm or corporation, or (3) negligence
60 in the operation of a motor vehicle.

61 (d) An action for reimbursement or recovery of the reasonable costs
62 expended for containment, removal or mitigation, including the
63 reasonable costs of investigation and monitoring shall be commenced
64 not later than six years after initiation of the physical on-site
65 construction of the remedial action taken to contain, remove or
66 mitigate the effects of oil or petroleum or chemical liquids or solid,
67 liquid or gaseous products or hazardous wastes or hazardous
68 substances, or three years after the completion of the containment,
69 removal or mitigation activities, whichever is later.

70 (e) In any action brought pursuant to this section, the Superior
71 Court may issue an order granting the reimbursement or recovery of
72 reasonable costs to be incurred in the future.

73 (f) A person shall not be liable under this section where the person
74 can establish by a preponderance of the evidence that the discharge,
75 spillage, uncontrolled loss, seepage or filtration of a hazardous
76 substance and the resulting damages were caused solely by (1) an act
77 of God, (2) an act of war, (3) an act or omission of a third party other
78 than an employee or agent of the person, other than one whose act or
79 omission occurs in connection with a contractual relationship, existing
80 directly or indirectly, with the person, except where the sole
81 contractual arrangement arises from a published tariff and acceptance
82 for carriage by a common carrier by rail, if the person establishes by a

83 preponderance of the evidence that such person (A) exercised due care
 84 with respect to the hazardous substance taking into consideration the
 85 characteristics of such hazardous substance, in light of all relevant facts
 86 and circumstances, and (B) took precautions against foreseeable acts or
 87 omissions of any such third party and the consequences that could
 88 foreseeably result from such acts or omissions, or (4) any combination of
 89 the foregoing.

90 (g) This section shall apply to any action brought before, on or after
 91 July 1, 2006, for the reimbursement or recovery of the reasonable costs
 92 for containment, removal or mitigation, including the reasonable costs
 93 of investigation and monitoring, except that it shall not apply to any
 94 action if such action has become final, and is no longer subject to
 95 appeal, prior to July 1, 2006.

This act shall take effect as follows and shall amend the following sections:		
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Section 1	<i>July 1, 2006</i>	22a-452
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Statement of Purpose:

To clarify and expand the circumstances that a person who is conducting remediation of a spill of hazardous substances can seek reimbursement for the costs of the remediation from other responsible parties.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]